



March 13, 2006

Mr. Dexter Thomas
EDI Comments
AMS, F&V, PACA Branch
1400 Independence Ave., S.W., Room 2095-S
Washington, D.C. 20250-0242

Dear Mr. Thomas:

**Subject: Regulations under the Perishable Agricultural Commodities Act
(PACA), Docket FV-05-373**

Established in 1911, the California Grape & Tree Fruit League (League) is a non-profit statewide industry trade association representing growers, packers, shippers, and exporters of table grapes and deciduous tree fruit. The League's members collectively account for about 85 percent of the total production of table grapes and tree fruit in California. During the last 65 years the association has provided technical assistance and advocacy for the membership on a wide array of issues, including federal and international trade issues, marketing regulations, product transportation, and packaging and labeling requirements.

Many of our members directly benefit from the Perishable Agricultural Commodities Act (PACA) regulations that insure the payment of a perishable commodity shipped in interstate commerce.

On behalf of our membership, we submit the following comments on the Federal Register published January 30, 2006. The California Grape and Tree Fruit League strongly support modification of the regulations of the Perishable Agricultural Commodities Act to simplify the practices of Electronic Data Interchange (EDI) invoicing.

In supporting this modification to protect shippers when electronically invoicing for fresh fruits and vegetables, and to allow coverage under the statutory trust on all EDI transmissions, it is mandatory and not discretionary for the buyer to accept the notice to preserve trust benefits whether documentary or electronic. The 1995 PACA amendment was intended to streamline the PACA Trust requirements, and provide licensees with alternative methods of preserving PACA Trust rights.

For the reason stated above, the California Grape and Tree Fruit League suggests that licensees may use their invoice or other billing statement to preserve trust benefits. The alternative method requires that the licensee's invoice or other billing statement, whether documentary or electronic, contain the following statement at the time of mailing or transmission to the debtor, regardless of whether or not the debtor downloads, receives, or accepts such statement.

- (i) Statement: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7U.S.C. 499e(c)). The seller of these commodities retain a trust claim over these commodities, all inventories of food or other products produced derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received. **And**
- (ii) The terms of payment if they differ from prompt payment set out in section 46.2(z) and (aa) of this part, and the parties have expressly agreed to such terms in writing before the affected transactions occur.

The League and its members encourage the adoption of this or similar language to address the concerns of PACA licensees when transmitting by EDI. This reflects industry practices and provides equal protection for a seller whether issuing paper invoicing or by electronic transfer.

The League strongly supports and sponsors the PACA Statutory Trust Provision, and to maintain this success the regulations must keep pace with the changing trade practices.

Sincerely,

Marcy L. Martin, Director, Trade Services
California Grape & Tree Fruit League

c: Barry Bedwell